

twice searched and examined the claims on the merits, including all the species I-V. Thus, this directive should be followed by the Examiner in the above-captioned case and the entire application should continued to be examined.

Procedural History

The above-captioned application was filed on September 10, 1999. On September 13, 2000 the PTO issued a first non-final Office Action rejecting claims pending claims 1-17. At the time of the PTO's rejection, claims 1-17 contained each of species I-V which the Examiner now restricts. In response to the September 13, 2000 Office Action, applicants amended claims 1, 5, 9, and 10 to clarify these claims, canceled claim 4 and added claims 18-19.

On May 4, 2001 the PTO issued a second non-final Office action rejecting all pending claims, 1-3 and 5-19. At the time of the PTO's May 4, 2001 rejection, claims 1-3 and 5-19 contained each of species I-V which the Examiner now restricts. In response to the PTO's May 4, 2001 Office Action, applicants amended claims 1, 9, and 10 and added claims 20-26. These claims contain species I-V which were claimed at the time the application was filed and which were twice searched and examined. At no time prior to January 2, 2002 did the PTO issue a restriction. Thus, the above-captioned application has been pending for **twenty seven (27) months**, and applicants have received two complete non-final Office Actions on the merits, before the PTO required restriction between groups I-V.

The Restriction Requirement Should Be Withdrawn

M.P.E.P. § 811 recites that the examiner should make a restriction requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops. *See*, M.P.E.P. § 811. In this case, the Examiner has twice searched and examined all of the species originally claimed when the application was filed in September, 1999. At this stage of the prosecution, is no serious burden on the Examiner to examine groups I-V together. The Examiner need only update the search made before the May 4, 2001 Office Action. Therefore, the Examiner should continue examination of claims 1-3 and 5-26 on the merits, even though the application may include claims to distinct or independent inventions. *See*, M.P.E.P. § 803.

Conclusion

In view of the foregoing, it is respectfully urged that claims 1-3 and 5-26, with species I-V, should be examined together. An early notice of allowance is earnestly solicited. Should there be any questions, Examiner Fortuna is courteously invited to contact the undersigned at the telephone number shown below.

Respectfully submitted,

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FOLEY & LARDNER
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5109
Telephone: (202) 672-5585
Facsimile: (202) 672-5399

By 

James M. Silbermann
Attorney for Applicant
Registration No. 40,413

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.